**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| In The Matter of | ) | |
| | ) | |
| Implementation of the | ) | CC Docket No. 96-98 |
| Local Competition Provisions | ) | |
| of the Telecommunications Act of 1996 | ) | |

**ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES OPPOSITION TO PETITION FOR RECONSIDERATION AND CLARIFICATION OF BELL ATLANTIC**

Pursuant to Section 1.429(g) of the Commission's Rules (47 C.F.R. § 1.429(g)) the Association for Local Telecommunications Services ("ALTS"), by its attorneys, respectfully submits the following comments on the petition for reconsideration filed by Bell Atlantic.[1]

## I. INTRODUCTION AND SUMMARY

The Bell Atlantic Petition is largely a rehash of arguments already made and rejected in the *Third Report and Order*[2] and fails to provide any new evidence meriting reconsideration. Because Bell Atlantic fails to raise anything new in its petition, the Commission is well within its discretion to summarily deny it.[3] Clearly, no useful purpose would be served by reopening this docket to consider Bell Atlantic's repetitious arguments again. Bell Atlantic

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1 Petition of Bell Atlantic for Reconsideration and Clarification, CC Docket Nos. 96-98. (filed Feb. 17, 2000) [hereinafter "Bell Atlantic Petition"].

2 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking,* (rel. Nov. 5, 1999) ("*Third Report and Order*").

3 *See, e.g., Southwestern Bell Telephone Company v. FCC,* 180 F.3d 307 (D.C. Cir. 1999) (an order denying reconsideration is not reviewable for material error but only for new evidence or changed circumstances); *Beehive Telephone Company, Inc. v. FCC*, 180 F.3d 314, (D.C. Cir. 1999) (same).

has provided no basis on which the Commission must, or even should, reconsider the challenged aspects of the Commission's *Third Report and Order.* Indeed, the conclusions challenged are consistent with current case law and with the specific provisions and broader purposes of the 1996 Act. Bell Atlantic claims, among other things, that the Commission: (1) should not require ILECs to provide the enhanced extended link ("EEL") as a prerequisite to relief from providing unbundled switching; (2) that the Commission does not have the authority to require that the EEL be provided; and (3) the Commission should not limit switch unbundling relief to business customers with four or more lines, but should provide such relief when customers have one, two, or three lines. As discussed below, the arguments put forth by Bell Atlantic with respect to the EEL were soundly rejected by the Commission in the *Third Report and Order*, and the Commission should summarily reject Bell Atlantic's petition for reconsideration.

## II. THE COMMISSION'S REQUIREMENT THAT THE EEL BE PROVIDED IN AREAS WHERE LOCAL SWITCHING IS NOT PROVIDED AS A UNE IS CONSISTENT WITH THE IMPAIR STANDARD

Bell Atlantic argues that the Commission should reconsider its decision to require the availability of EELs throughout access Zone 1 as a condition of relief from switch unbundling because (1) the Commission's rationale for requiring the EEL—reduction of the cost of collocation—does not satisfy the Commission's impairment test for unbundled switching; (2) the Commission does not have the authority to require ILECs to combine elements not already combined in their networks; and (3) requiring EELs will undermine the investment that competing carriers have already made in their network facilities. Bell Atlantic's tired and recycled arguments have not only been considered and rejected by the Commission, but they are also fundamentally flawed.

### A. The Impair Analysis Demands that the EEL Be Provided

Bell Atlantic clearly does not have a grasp of the Commission's impair analysis, and in fact, the Commission has already considered, and rejected Bell Atlantic's arguments. Applying the impair standard, it is quite clear that competitors' ability to compete will be materially impaired if they are unable to obtain access to EELs in the absence of local switching. As ALTS explained at length on the record below, because CLECs cannot in the near term hope to approximate the ubiquity of ILEC loop plant, central offices and transport facilities, CLECs will be materially disadvantaged in terms of cost, scope of availability, and time-to-market in those areas where unbundled switching is not available. Without access to EELs, CLECs would be forced to collocate in every ILEC end office serving CLEC customers. EELs alleviate the competitive disparity created by the ILECs' ubiquitous network infrastructure by maximizing the number of customers that can be served from a single CLEC point of presence. Accordingly, EELs substantially reduce the cost and delays associated with collocation, while at the same time conserving scarce ILEC space for collocation in ILEC end offices. Indeed, in end offices where ILECs have reached space exhaust, EELs may provide new entrants with the only efficient means of competing. Further, the availability of the EEL is even more critical in light of the recent decision in *GTE Service Corp. v. FCC*,[4] in which the court vacated significant portions of the Commission's collocation rules.[5] Based on past experience, it is reasonable to anticipate that ILECs will use this decision as an opportunity to unreasonably constrain the ability of CLECs to obtain collocation in a manner contemplated by the Act. It is clear that without access to EELs

4 *GTE Service Corp. v. FCC*, __ F.3d __, No. 99-1176, slip op.(D.C. Cir. Mar. 17, 2000).

5 *See In the Matter of the Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd 4761 (rel. Mar. 1999)

in those areas where unbundled local switching is not available, CLECs would be materially impaired.

### B. The Commission Has the Authority to Require that EELs Be Provided

Bell Atlantic once again trots out its tired argument that under Rule 315(b) the Commission does not have the authority to require that the EEL be provided because the Commission may not require incumbent carriers to combine elements that are not already combined in their networks. Bell Atlantic's strained reading of the Commission's rules was firmly rejected by the Supreme Court in *AT&T v. Iowa Util. Bd.* As the Supreme Court made clear, "[Section 251(c)(3)] assuredly contemplates that elements may be requested and provided in [discrete pieces] (which the Commission's rules do not prohibit). But it does not say, or even remotely imply, that elements must be provided only in this fashion and never in combined form."[6] The Supreme Court's reinstatement of Rule 315(b) erased any doubt that an ILEC must make available to competitors on a cost-based, unbundled basis combinations of UNEs used by the ILEC in provisioning retail services to its own customers.[7] As the Commission explained in its *Local Competition First Report and Order,* "incumbent LECs are required to perform the functions necessary to combine those elements that are ordinarily combined within their network, in the manner in which they are typically combined."[8] Accordingly, the Commission should reject Bell Atlantic's invitation to further examine this well-settled point.

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6 *AT&T v. Iowa Util. Bd.*, 119 S. Ct., 721, 737 (1999).

7 *AT&T v. Iowa Util. Bd.,* 736-38.

8 *Local Competition First Report and Order,* ¶ 296.

## III. THE COMMISSION SHOULD RECONSIDER ITS DECISION TO REQUIRE THAT CLECs PAY LOOP CONDITIONING CHARGES FOR DSL LOOPS

Despite acknowledging that "networks built today should not require voice-transmission enhancing devices on loops of 18,000 feet or shorter" the Commission concluded in the *Third Report and Order* that ILECs could impose upon CLECs the costs of loop conditioning.[9] As a number of competing carriers noted in their petitions for reconsideration, in a forward-looking environment loops would already be conditioned to provide data services.[10] Furthermore, the Commission recognized that ILECs will "have an incentive to inflate the charge for line conditioning by including additional common and overhead costs, as well as profits."[11] Nonetheless, the *Third Report and Order* authorizes ILECs to impose conditioning charges, despite the fact that the TELRIC recurring loop rate ensures that ILECs will fully recover any costs incurred in loop conditioning. The Commission's determination is directly at odds with the principles of TELRIC because it permits ILECs to double-recover the cost of loop conditioning—once through the TELRIC loop rate, and again through the separate conditioning charge. ALTS agrees that the Commission should reconsider its decision to allow ILECs to recover conditioning costs in a manner that is inconsistent with TELRIC. Further, ALTS agrees with the Joint Petitioners that even if upon reconsideration the Commission affirms its decision to allow ILECs to impose loop conditioning charges, it should clarify that ILECs may only impose charges where they are actually incurred.[12]

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9 *Third Report and Order*, ¶ 193.

10 Petition for Reconsideration of MCIWorldcom, 15; McLeod USA Telecommunications Petition for Reconsideration; Joint Petition for Reconsideration of Rhythms NetConnnections, Inc. and Covad Communications Co; Joint Petition of @LinkNetworks, DSL.net, & Mpower Communications, Inc. [hereinafter "Joint Petitioners"], 4-7; Petition for Reconsideration and Clarification of Sprint Corporation, 3.

11 *Third Report and Order*, ¶ 194.

12 Joint Petitioners, 6.

## CONCLUSION

For the foregoing reasons, the Commission should deny the Bell Atlantic Petition, and should move forward expeditiously to complete this proceeding.

Respectfully submitted,

ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing were sent by first class mail, postage prepaid, on this 22nd day of March, 2000 to the following parties:

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